

DEPARTMENT OF THE ARMY JACKSONVILLE DISTRICT CORPS OF ENGINEERS 4400 PGA BLVD., SUITE 500 PALM BEACH GARDENS, FLORIDA 33410

0 1 AUG 2009

Palm Beach Gardens Section SAJ-2005-2880(IP-JWH)

Palm Beach County
Department of Engineering and Public Works
Attn: Omelio Fernandez
2300 N Jog Rd., 3rd Floor
West Palm Beach, FL 33411-2743

Dear Mr. Fernandez:

The U.S. Army Corps of Engineers (Corps) is pleased to enclose the Department of the Army permit, which should be available at the construction site. Work may begin immediately but the Corps must be notified of:

- a. The date of commencement of the work,
- b. The dates of work suspensions and resumptions of work, if suspended over a week, and
 - c. The date of final completion.

This information should be mailed to the Enforcement Section of the Regulatory Division of the Jacksonville District at Post Office Box 4970, Jacksonville, Florida 32232-0019. The Enforcement Section is also responsible for inspections to determine whether Permittees have strictly adhered to permit conditions.

IT IS NOT LAWFUL TO DEVIATE FROM THE APPROVED PLANS ENCLOSED.

Sincerely,

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Chief, **Ke**gulatory Division

Enclosures

Copies Furnished:

Palm Beach County Dept of Environmental Resources Management 2300 N Jog Rd., 4th Floor, West Palm Beach, FL 33411

CESAJ-RD-PE

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applic	eant: Palm Beach County Dept of Engineering & Public File Number: SAJ-2005-2880	Date: § 1 AUG 2008
Attach	ed is:	See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
X	PROFFERED PERMIT (Standard Permit or Letter of permission)	В
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION 1 - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.
- B: PROFFERED PERMIT: You may accept or appeal the permit
- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may
 appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and
 sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this
 notice.
- C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.
- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

EQUEST FOR APPEAL of OBJECTIONS TO AN INITIAL PROF	PERFORERMIT			
REASONS FOR APPEAL OF OBJECTIONS: (Describe your reas proffered permit in clear concise statements. You may attach additional objections are addressed in the administrative record.)	cons for annealing the decision or	your objections to an initial larify where your reasons or		
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ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.				
POINT OF CONTACT FOR QUESTIONS OR INFORMATION If you have questions regarding this decision and/or the appeal process you may contact:		ding the appeal process you may		
Project Manager as noted in letter	404-562-5137			
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.				
	Date:	Telephone number:		
Signature of appellant or agent.				

DEPARTMENT OF THE ARMY PERMIT

Permittee: Palm Beach County Board of County Commissioners

Department of Engineering and Public Works

Attn: Omelio Fernandez

2300 North Jog Road, 3rd Floor

West Palm Beach, FL 33411

01 AUG XXXX

Permit No: SAJ-2005-2880(IP-JWH)

Issuing Office: U.S. Army Engineer District, Jacksonville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The applicant proposes to directly impact 1.95 acres of hydric pine flatwoods, wet prairie and freshwater marsh through fill placement for construction of a 1.2 mile section of Jog Road from Donald Ross Road to approximately 1000 feet south of the intersection of Jog Road and Hood Road. To offset impacts to wetlands, the applicant has proposed to preserve and manage a 28 acre area of wetlands within Palm Beach County's Pine Glades Natural Area.

Project Location: The project is located within waters of the US between Donald Ross Road and 1000 feet south of the intersection of Jog Road and Hood Road, (Section 28,33 Township 41 S, Range 42 E), in Palm Beach County, Florida.

Directions to site: From I-95 in Palm Beach County, exit on Donald Ross Road (Exit 83) and travel west to the end. The project begins south of Donald Ross Road to Jog Road.

Latitude & Longitude: Latitude: 26.8786704441 N

Longitude: 80.1443765367 W

Permit Conditions

General Conditions:

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- 1. The time limit for completing the work authorized ends on **August 1**, **2013**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
- 2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
- 3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- 4. If you sell the property associated with this permit, you must obtain the signature and the mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
- 5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Attachment A).
- 6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

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Special Conditions:

- 1. All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232. The Permittee shall reference this permit number, SAJ-2005-2880(IP-JWH), on all submittals.
- 2. Within 10 days from the date of initiating the authorized work, the Permittee shall provide to the Corps a written notification of the date of commencement of work authorized by this permit.
- 3. The Permittee shall avoid the remaining onsite wetlands, as detailed on Drawings 2 through 6 of 7. These natural wetland areas were avoided as part of the permit application review process and therefore will not be disturbed by any dredging, filling, mechanized land clearing, agricultural activities, or other construction work whatsoever. The Corps reserves the right to deny review of any requests for future impacts to these natural wetland areas.
- 4. Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas adjacent to wetlands shall be stabilized using sod, degradable mats, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work has been completed and the site has been stabilized.
- 5. The applicant shall comply with the Standard Protection Measures for the Eastern Indigo Snake, Service 2002 (Attachment E).
- 6. If prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are

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encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, should contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or (800) 847-7278, as well as, the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

7. Within 6 months from the from the date of initiating the authorized work or 12 months from the effective date of this permit, whichever first occurs, the Permittee shall complete the following mitigation objectives in accordance with the approved Wetland Mitigation Plan (Attachment D) as detailed on Figures 1.01, 1.02, 2.01, 3, 4, 5 and 6 of the Mitigation Plan.

a. Offsite Mitigation

(1) Wetland Enhancement: Treat and remove Category I and II invasive exotic plant species from mitigation area and manage area in accordance with County's Management Plan for Pine Glades Natural Area Including FCT Project #5-028-FF5 - Indian Lakes Natural Area, Palm Beach County Department of Environmental Resources Management - March 2008.

The offsite compensatory mitigation area shall be preserved in perpetuity in accordance with the **Conservation Easement** Special Condition of this permit.

- 8. To meet the objectives of the approved compensatory mitigation plan, the Permittee shall achieve the following performance standards:
- a. At least 80 percent cover by appropriate wetland species (i.e., FAC or wetter).
- b. Cover of Category I and II invasive exotic plant species, pursuant to the most current list established by the Florida

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Exotic Pest Plant Council at http://www.fleppc.org, and the nuisance species primrose willow (Ludwigia peruviana), dogfennel (Eupatorium capillifolium), Bermudagrass (Cynodon spp.), Bahiagrass (Paspalum notatum), and cattail (Typha spp.). shall total less than 5 percent in the mitigation area.

c. Maintain the entire 28 acre mitigation area in accordance with the County's Pine Glades Natural Area Management Plan.

The Permittee shall achieve the above performance standards by the end of the 5-year monitoring period, with no maintenance during the 5th year of monitoring. In the event that the above performance standards have not been achieved, the Permittee shall undertake a remediation program approved by the Corps in accordance with the **Remediation** Special Condition of this permit.

- 9. To show compliance with the performance standards the Permittee shall complete the following:
- a. Perform a time-zero monitoring event of the wetland mitigation area(s) within 60 days of completion of the compensatory mitigation objectives identified in the **Compensatory Mitigation** Special Condition of this permit.
- b. Submit the time-zero report to the Corps within 60 days of completion of the monitoring event. The report will include at least one paragraph depicting baseline conditions of the mitigation site(s) prior to initiation of the compensatory mitigation objectives and a detailed plan view drawing of all created, enhanced and/or restored mitigation areas.
- c. Subsequent to completion of the compensatory mitigation objectives, perform semi-annual monitoring of the wetland mitigation areas for the first 3 years and annual monitoring thereafter for a total of no less than 5 years of monitoring.
- d. Submit annual monitoring reports to the Corps within 60 days of completion of the monitoring event. Semi-annual monitoring will be combined into one annual monitoring report.

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e. Monitor the mitigation area(s) and submit annual monitoring reports to the Corps until released in accordance with the **Mitigation Release** Special Condition of this permit.

- 4

- 10. Reporting Format: Annual monitoring reports shall follow a 10-page maximum report format for assessing compensatory mitigation sites. The Permittee shall submit all documentation to the Corps on 8½-inch by 11-inch paper, and include the following:
 - a. Project Overview (1 Page):
 - (1) Department of the Army Permit Number
- (2) Name and contact information of Permittee and consultant
- (3) Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted
- (4) A summary paragraph defining the purpose for the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts
- (5) Written description on the location and any identifiable information to locate the site perimeter(s)
- (6) Directions to the mitigation site (from a major highway)
- (7) Dates compensatory mitigation commenced and/or was completed
- (8) Short statement on whether the performance standards are being met
- (9) Dates of any recent corrective or maintenance activities conducted since the previous report submission
- (10) Specific recommendations for any additional corrective or remedial actions.

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b. Requirements (1 page): List the monitoring requirements and performance standards, as specified in the approved mitigation plan and special conditions of this permit, and evaluate whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success.

- c. Summary Data (maximum of 4 pages): Data shall be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Any photo documentation shall be dated and clearly labeled with the direction from which the photo was taken, and be identified on the appropriate maps.
- d. Maps (maximum of 3 pages): Maps shall be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan.
- e. Conclusions (1 page): A general statement shall be included describing the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the Permittee, including a timetable, shall be provided.
- 11. If the compensatory mitigation fails to meet the performance standards 5 years after completion of the compensatory mitigation objectives, the compensatory mitigation will be deemed unsuccessful. Within 60 days of notification by the Corps that the compensatory mitigation is unsuccessful, the Permittee shall submit to the Corps an alternate compensatory mitigation proposal sufficient to create the functional lift required under the permit. The alternate compensatory mitigation proposal may be required to include additional mitigation to compensate for the temporal loss of wetland function associated with the unsuccessful compensatory mitigation activities. The Corps reserves the right to fully evaluate, amend, and approve or reject the alternate compensatory mitigation proposal. Within 120 days of Corps approval, the Permittee will complete the alternate compensatory mitigation proposal.

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- 12. The Permittee's responsibility to complete the required compensatory mitigation, as set forth in the Compensatory Mitigation Special Condition of this permit will not be considered fulfilled until mitigation success has been demonstrated and written verification has been provided by the Corps. A mitigation area which has been released will require no further monitoring or reporting by the Permittee; however the Permittee, Successors and subsequent Transferees remain perpetually responsible to ensure that the mitigation area(s) remain in a condition appropriate to offset the authorized impacts in accordance with General Condition 2 of this permit.
- 13. Within 60 days of completion of the authorized work or at the expiration of the construction window of this permit, whichever occurs first, the Permittee shall submit as-built drawings of the authorized work and a completed As-Built Certification Form (Attachment C) to the Corps. The drawings shall be signed and sealed by a registered professional engineer and include the following:
- a. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings (8½-inch by 11-inch). The drawing should show all "earth disturbance," including wetland impacts, water management structures, and any on-site mitigation areas.
- b. List any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the As-Built Certification Form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or As-Built Certification Form does not constitute approval of any deviations by the U.S. Army Corps of Engineers.
 - c. The Department of the Army Permit number.
- d. Include pre- and post-construction aerial photographs of the project site, if available.

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- 14. Conservation Easement: The Permittee shall preserve 28 acre(s) of wetlands (Conservation Areas) in perpetuity by recording a conservation easement within the boundaries and location annotated on the figures located within the attached wetland mitigation plan (Figures 1.02, 2.01), and in accordance with procedures outlined in Special Condition No. 17 of the attached South Florida Water Management District permit 50-08187-P (Attachment B) and the following conditions:
- a. Within 30 days from the date of initiating the authorized work or 12 months from the effective date of this permit, whichever first occurs, the Permittee shall submit to the Corps a copy of the recorded conservation easement document with exhibits (including legal description and sketch).
- b. Any deviation from the established conservation easement cannot be performed without a modification to this permit instrument. The ability to modify or remove this conservation easement is neither implied nor guaranteed. If the conservation easement is removed for any reason, the Permittee shall provide appropriate mitigation to compensate for functional wetland loss.

Further Information:

- 1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
 - 2. Limits of this authorization.
- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

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b. This permit does not grant any property rights or exclusive privileges.

- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.
- 3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
- 5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.

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b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

6/20/08 (DATE)

Morton Rose, P.E, Manager Five Year Road Program

(PERMITTEE NAME-PRINTED)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)
Paul L. Grosskruger
Colonel, U.S. Army
District Commander

7 July 08

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When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

	(DATE)
(TRANSFEREE-SIGNATURE)	(122 t ta /
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(CITY, STATE, AND ZIP CODE)	

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Attachments to Department of the Army Permit Number SAJ-2005-2880(IP-JWH)

- 1. PERMIT DRAWINGS: 7 pages, dated June 19, 2008
- 2. WATER QUALITY CERTIFICATION: Specific Conditions of the water quality permit/certification in accordance with General Condition number 5 on page 2 of this DA permit. Attachment A.
- 3. Specific Conditions of the South Florida Water Management District Environmental Resource Permit No 50-08187-P. Attachment B.
- 4. As-Built Certification Form. Attachment C.
- 5. Wetland Mitigation Plan, Jog Road and Donald Ross Road Mitigation Area (PBC ERM June 9, 2008). Attachment D.
- 6. Additional Documents: Standard Protection Measures for the Eastern Indigo Snake (Service 2002). Attachment E.